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SENATE BILL 428

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO INSURANCE; CLARIFYING THE DEFINITION OF "ELIGIBLE PARTICIPATING RETIREE" IN THE RETIREE HEALTH CARE ACT; EXPANDING THE DEFINITION OF "ELIGIBLE DEPENDENT"; REQUIRING ADDITIONAL CONTRIBUTIONS FROM EMPLOYEES WHO HAVE ACCRUED CERTAIN SERVICE CREDITS; REQUIRING RETIREES RETURNING TO WORK AND THEIR EMPLOYERS TO CONTRIBUTE TO THE RETIREE HEALTH CARE FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-7C-4 NMSA 1978 (being Laws 1990, Chapter 6, Section 4, as amended) is amended to read:

"10-7C-4. DEFINITIONS.--As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in

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1 either the Educational Retirement Act, the Public Employees
2 Retirement Act, the Judicial Retirement Act, the Magistrate
3 Retirement Act or the Public Employees Retirement Reciprocity
4 Act or an employee of an independent public employer;

5 B. "authority" means the retiree health care
6 authority created pursuant to the Retiree Health Care Act;

7 C. "basic plan of benefits" means only those
8 coverages generally associated with a medical plan of benefits;

9 D. "board" means the board of the retiree health
10 care authority;

11 E. "current retiree" means an eligible retiree who
12 is receiving a disability or normal retirement benefit under
13 the Educational Retirement Act, the Public Employees Retirement
14 Act, the Judicial Retirement Act, the Magistrate Retirement
15 Act, the Public Employees Retirement Reciprocity Act or the
16 retirement program of an independent public employer on or
17 before July 1, 1990;

18 F. "domestic partner" means a person who is a
19 partner of a current retiree where the current retiree and the
20 partner submit a properly executed domestic partnership
21 affidavit and where the current retiree and the partner
22 currently:

23 (1) are in an exclusive and committed
24 relationship for the benefit of each other;

25 (2) share a primary residence and have done so

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1 for twelve or more consecutive months;

2 (3) are jointly responsible for each other's
3 common welfare and share financial obligations; and

4 (4) are not married and are not members of
5 another domestic partnership;

6 G. "domestic partnership affidavit" means a sworn,
7 written statement, in a form approved by the authority, by
8 which:

9 (1) both members of a domestic partnership
10 affirm, solely for the purpose of obtaining employee domestic
11 partner benefits through the authority, that:

12 (a) the partners are in an exclusive and
13 committed relationship for the benefit of each other;

14 (b) the partners share a primary
15 residence and have done so for twelve or more consecutive
16 months;

17 (c) the partners are jointly responsible
18 for each other's common welfare and share financial
19 obligations;

20 (d) neither partner is married or a
21 member of another domestic partnership;

22 (e) both partners are at least eighteen
23 years of age; and

24 (f) both partners are legally competent
25 to sign an affidavit of domestic partnership; or

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1 (2) a current retiree notifies the authority
2 that domestic partner benefits should be terminated because the
3 current retiree's domestic partnership relationship is
4 terminated;

5 [~~F.~~] H. "eligible dependent" means a person
6 obtaining retiree health care coverage based upon that person's
7 relationship to an eligible retiree as follows:

8 (1) a spouse or domestic partner;
9 (2) an unmarried child under the age of
10 nineteen who is:

11 (a) a natural child;
12 (b) a legally adopted child;
13 (c) a stepchild living in the same
14 household who is primarily dependent on the eligible retiree
15 for maintenance and support;

16 (d) a child for whom the eligible
17 retiree is the legal guardian and who is primarily dependent on
18 the eligible retiree for maintenance and support, as long as
19 evidence of the guardianship is evidenced in a court order or
20 decree; or

21 (e) a foster child living in the same
22 household;

23 (3) a child described in Subparagraphs (a)
24 through (e) of Paragraph (2) of this subsection who is between
25 the ages of nineteen and twenty-five and is a full-time student

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1 at an accredited educational institution; provided that
2 "full-time student" shall be a student enrolled in and taking
3 twelve or more semester hours or its equivalent contact hours
4 in primary, secondary, undergraduate or vocational school or a
5 student enrolled in and taking nine or more semester hours or
6 its equivalent contact hours in graduate school;

7 (4) a dependent child over nineteen who is
8 wholly dependent on the eligible retiree for maintenance and
9 support and who is incapable of self-sustaining employment by
10 reason of mental retardation or physical handicap; provided
11 that proof of incapacity and dependency shall be provided
12 within thirty-one days after the child reaches the limiting age
13 and at such times thereafter as may be required by the board;

14 (5) a surviving spouse defined as follows:

15 (a) "surviving spouse" means the spouse
16 to whom a retiree was married or the domestic partner of a
17 retiree at the time of death; or

18 (b) "surviving spouse" means the spouse
19 to whom a deceased vested active employee was married or the
20 domestic partner of a deceased vested active employee at the
21 time of death; or

22 (6) a surviving dependent child who is the
23 dependent child of a deceased eligible retiree whose other
24 parent is also deceased;

25 [~~G.~~] I. "eligible employer" means either:

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1 (1) a "retirement system employer", which
2 means an institution of higher education, a school district or
3 other entity participating in the public school insurance
4 authority, a state agency, state court, magistrate court,
5 municipality, county or public entity, each of which is
6 affiliated under or covered by the Educational Retirement Act,
7 the Public Employees Retirement Act, the Judicial Retirement
8 Act, the Magistrate Retirement Act or the Public Employees
9 Retirement Reciprocity Act; or

10 (2) an "independent public employer", which
11 means a municipality, county or public entity that is not a
12 retirement system employer;

13 [~~H.~~] J. "eligible retiree" means:

14 (1) a "nonsalaried eligible participating
15 entity governing authority member", which means a person who is
16 not a retiree and who:

17 (a) has served without salary as a
18 member of the governing authority of an employer eligible to
19 participate in the benefits of the Retiree Health Care Act and
20 is certified to be such by the executive director of the public
21 school insurance authority;

22 (b) has maintained group health
23 insurance coverage through that member's governing authority if
24 such group health insurance coverage was available and offered
25 to the member during the member's service as a member of the

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1 governing authority; and

2 (c) was participating in the group
3 health insurance program under the Retiree Health Care Act
4 prior to July 1, 1993; or

5 (d) notwithstanding the provisions of
6 Subparagraphs (b) and (c) of this paragraph, is eligible under
7 Subparagraph (a) of this paragraph and has applied before
8 August 1, 1993 to the authority to participate in the program;

9 (2) a "salaried eligible participating entity
10 governing authority member", which means a person who is not a
11 retiree and who:

12 (a) has served with salary as a member
13 of the governing authority of an employer eligible to
14 participate in the benefits of the Retiree Health Care Act;

15 (b) has maintained group health
16 insurance through that member's governing authority, if such
17 group health insurance was available and offered to the member
18 during the member's service as a member of the governing
19 authority; and

20 (c) was participating in the group
21 health insurance program under the Retiree Health Care Act
22 prior to July 1, 1993; or

23 (d) notwithstanding the provisions of
24 Subparagraphs (b) and (c) of this paragraph, is eligible under
25 Subparagraph (a) of this paragraph and has applied before

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1 August 1, 1993 to the authority to participate in the program;

2 (3) an "eligible participating retiree", which
3 means a person who:

4 (a) falls within the definition of a
5 retiree, has made contributions to the fund for at least five
6 years prior to retirement and whose eligible employer during
7 that period of time made contributions as a participant in the
8 Retiree Health Care Act on the person's behalf, unless that
9 person retires on or before July 1, 1995, in which event the
10 time period required for employee and employer contributions
11 shall become the period of time between July 1, 1990 and the
12 date of retirement, and who is certified to be a retiree by the
13 educational retirement director, the executive secretary of the
14 public employees retirement board or the governing authority of
15 an independent public employer;

16 (b) falls within the definition of a
17 retiree, retired prior to July 1, 1990 and is certified to be a
18 retiree by the educational retirement director, the executive
19 secretary of the public employees retirement association or the
20 governing authority of an independent public employer; but this
21 paragraph does not include a retiree who was an employee of an
22 eligible employer who exercised the option not to be a
23 participating employer pursuant to the Retiree Health Care Act
24 and did not after January 1, 1993 elect to become a
25 participating employer; unless the retiree: 1) retired on or

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1 before June 30, 1990; and 2) at the time of retirement did not
2 have a retirement health plan or retirement health insurance
3 coverage available from [~~his~~] the retiree's employer; or

4 (c) is a retiree who: 1) was at the
5 time of retirement an employee of an eligible employer who
6 exercised the option not to be a participating employer
7 pursuant to the Retiree Health Care Act, but which eligible
8 employer subsequently elected after January 1, 1993 to become a
9 participating employer; 2) has made contributions to the fund
10 for at least five years prior to retirement and whose eligible
11 employer during that period of time made contributions as a
12 participant in the Retiree Health Care Act on the person's
13 behalf, unless that person retires prior to the eligible
14 employer's election to become a participating employer or less
15 than five years after the date participation begins when the
16 participation date begins before July 1, 2009, in which event
17 the time period required for employee and employer
18 contributions shall become the period of time, if any, between
19 the date participation begins and the date of retirement or
20 when the participation date begins on or after July 1, 2009, in
21 which event the person and employer shall contribute to the
22 fund an amount equal to at least five years of employee and
23 employer contributions; and 3) is certified to be a retiree by
24 the educational retirement director, the executive director of
25 the public employees retirement board or the governing

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1 authority of an independent public employer;

2 (4) a "legislative member", which means a
3 person who is not a retiree and who served as a member of the
4 New Mexico legislature for at least two years, but is no longer
5 a member of the legislature and is certified to be such by the
6 legislative council service; or

7 (5) a "former participating employer governing
8 authority member", which means a person, other than a
9 nonsalaried eligible participating entity governing authority
10 member or a salaried eligible participating entity governing
11 authority member, who is not a retiree and who served as a
12 member of the governing authority of a participating employer
13 for at least four years but is no longer a member of the
14 governing authority and whose length of service is certified by
15 the chief executive officer of the participating employer;

16 [~~F.~~] K. "fund" means the retiree health care fund;

17 [~~J.~~] L. "group health insurance" means coverage
18 that includes but is not limited to life insurance, accidental
19 death and dismemberment, hospital care and benefits, surgical
20 care and treatment, medical care and treatment, dental care,
21 eye care, obstetrical benefits, prescribed drugs, medicines and
22 prosthetic devices, medicare supplement, medicare carveout,
23 medicare coordination and other benefits, supplies and services
24 through the vehicles of indemnity coverages, health maintenance
25 organizations, preferred provider organizations and other

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1 health care delivery systems as provided by the Retiree Health
2 Care Act and other coverages considered by the board to be
3 advisable;

4 ~~[K.]~~ M. "ineligible dependents" ~~[include]~~ includes:

5 (1) those dependents created by common law
6 relationships;

7 (2) dependents while in active military
8 service;

9 (3) parents, aunts, uncles, brothers, sisters,
10 grandchildren and other family members left in the care of an
11 eligible retiree without evidence of legal guardianship; and

12 (4) anyone not specifically referred to as an
13 eligible dependent pursuant to the rules ~~[and regulations]~~
14 adopted by the board;

15 ~~[L.]~~ N. "participating employee" means an employee
16 of a participating employer, which employee has not been
17 expelled from participation in the Retiree Health Care Act
18 pursuant to Section 10-7C-10 NMSA 1978;

19 ~~[M.]~~ O. "participating employer" means an eligible
20 employer who has satisfied the conditions for participating in
21 the benefits of the Retiree Health Care Act, including the
22 requirements of Subsection M of Section 10-7C-7 NMSA 1978 and
23 Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable;

24 ~~[N.]~~ P. "public entity" means a flood control
25 authority, economic development district, council of

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1 governments, regional housing authority, conservancy district
2 or other special district or special purpose government; and

3 ~~[0-]~~ Q. "retiree" means a person who:

4 (1) is receiving:

5 (a) a disability or normal retirement
6 benefit or survivor's benefit pursuant to the Educational
7 Retirement Act;

8 (b) a disability or normal retirement
9 benefit or survivor's benefit pursuant to the Public Employees
10 Retirement Act, the Judicial Retirement Act, the Magistrate
11 Retirement Act or the Public Employees Retirement Reciprocity
12 Act; or

13 (c) a disability or normal retirement
14 benefit or survivor's benefit pursuant to the retirement
15 program of an independent public employer to which that
16 employer has made periodic contributions; or

17 (2) is not receiving a survivor's benefit but
18 is the eligible dependent of a person who received a disability
19 or normal retirement benefit pursuant to the Educational
20 Retirement Act, the Public Employees Retirement Act, the
21 Judicial Retirement Act, the Magistrate Retirement Act or the
22 Public Employees Retirement Reciprocity Act."

23 Section 2. Section 10-7C-15 NMSA 1978 (being Laws 1990,
24 Chapter 6, Section 15, as amended) is amended to read:

25 "10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS.--

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1 A. Following completion of the preliminary
2 contribution period, each participating employer shall make
3 contributions to the fund in the amount of:

4 (1) one percent of each participating
5 employee's annual salary for the period July 1, 1990 through
6 June 30, 2002; and

7 (2) up to one and three-tenths percent of each
8 participating employee's annual salary beginning July 1, 2002.

9 Each employer that chooses to become a participating
10 employer after January 1, 1998 shall make contributions to the
11 fund in the amount determined to be appropriate by the board.

12 B. Following completion of the preliminary
13 contribution period, each participating employee, as a
14 condition of employment, shall contribute to the fund an
15 employee contribution in an amount equal to:

16 (1) one-half of one percent of the employee's
17 salary for the period July 1, 1990 through June 30, 2002; and

18 (2) up to sixty-five hundredths of one percent
19 beginning July 1, 2002.

20 As a condition of employment, each participating employee
21 of an employer that chooses to become a participating employer
22 after January 1, 1998 shall contribute to the fund an amount
23 that is determined to be appropriate by the board. Each month,
24 participating employers shall deduct the contribution from the
25 participating employee's salary and shall remit it to the board

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1 as provided by any procedures that the board may require.

2 C. No person shall obtain service credit pursuant
3 to Section 10-11-6, 10-11-7 or 22-11-34 NMSA 1978 unless that
4 person makes a contribution to the fund equal to the full
5 actuarial present value of the amount of the increase in the
6 person's health care benefit as determined by the authority.

7 [~~E.~~] D. Except for contributions made pursuant to
8 Subsection C of this section, a participating employer that
9 fails to remit before the tenth day after the last day of the
10 month all employer and employee deposits required by the
11 Retiree Health Care Act to be remitted by the employer for the
12 month shall pay to the fund, in addition to the deposits,
13 interest on the unpaid amounts at the rate of six percent per
14 year compounded monthly.

15 [~~D.~~] E. Except for contributions made pursuant to
16 Subsection C of this section, the employer and employee
17 contributions shall be paid in monthly installments based on
18 the percent of payroll certified by the employer.

19 [~~E.~~] F. Except in the case of erroneously made
20 contributions or as may be otherwise provided in Subsection D
21 of Section 10-7C-9 NMSA 1978, contributions from participating
22 employers and participating employees shall become the property
23 of the fund on receipt by the board and shall not be refunded
24 under any circumstances, including termination of employment or
25 termination of the participating employer's operation or

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1 participation in the Retiree Health Care Act.

2 [~~F-~~] G. Notwithstanding any other provision in the
3 Retiree Health Care Act and at the first session of the
4 legislature following July 1, 2010, the legislature shall
5 review and adjust the distribution pursuant to Section 7-1-6.1
6 NMSA 1978 and the employer and employee contributions to the
7 authority in order to ensure the actuarial soundness of the
8 benefits provided under the Retiree Health Care Act."

9 Section 3. A new section of the Retiree Health Care Act
10 is enacted to read:

11 "[NEW MATERIAL] RETURN TO EMPLOYMENT--CONTRIBUTIONS.--
12 From the time a retiree returns to employment until the
13 subsequent employment is terminated, both the retiree and the
14 participating employer that employs the retiree shall make
15 contributions to the fund in the amount specified in
16 Subsections A and B of Section 10-7C-15 NMSA 1978."

17 Section 4. Section 10-11-6 NMSA 1978 (being Laws 1987,
18 Chapter 253, Section 6, as amended) is amended to read:

19 "10-11-6. CREDITED SERVICE--CREDIT FOR INTERVENING
20 MILITARY AND UNITED STATES GOVERNMENT SERVICE.--

21 A. A member who leaves the employ of an affiliated
22 public employer to enter a uniformed service of the United
23 States shall be given service credit for periods of service in
24 the uniformed services subject to the following conditions:

25 (1) the member is reemployed by an affiliated

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1 public employer within ninety days following termination of the
2 period of intervening [~~serv~~ing] service in the uniformed
3 service or the affiliated employer certifies in writing to the
4 association that the member is entitled to reemployment rights
5 under the federal Uniformed Services Employment and
6 Reemployment Rights Act of 1994;

7 (2) the member retains membership in the
8 association during the period of service in the uniformed
9 services;

10 (3) free service credit shall not be given for
11 periods of intervening service in the uniformed services
12 following voluntary reenlistment. Service credit for such
13 periods shall be given only after the member pays the
14 association the sum of the contributions that the person would
15 have been required to contribute had the person remained
16 continuously employed throughout the period of intervening
17 service following voluntary reenlistment, which payment shall
18 be made during the period beginning with the date of
19 reemployment and whose duration is three times the period of
20 the person's intervening service in the uniformed services
21 following voluntary reenlistment, not to exceed five years;

22 (4) the member makes a contribution to the
23 retiree health care fund pursuant to Subsection C of Section
24 10-7C-15 NMSA 1978;

25 [~~(4)~~] (5) service credit shall not be given

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1 for periods of intervening service in the uniformed services
2 that are used to obtain or increase a benefit from another
3 state system or the retirement program provided under the
4 Educational Retirement Act; and

5 [~~(5)~~] (6) the member must not have received a
6 discharge or separation from uniformed service under other than
7 honorable conditions.

8 Notwithstanding any provision of this plan to the
9 contrary, contributions, benefits and service credit with
10 respect to qualified military service will be provided in
11 accordance with Section 414(u) of the Internal Revenue Code of
12 1986, as amended.

13 B. For a member who is subsequently employed by the
14 government of the United States within thirty days of leaving
15 the employ of an affiliated public employer:

16 (1) that member may continue membership in the
17 association subject to the following conditions:

18 (a) the member has fifteen or more years
19 of credited service;

20 (b) employment by the government of the
21 United States commences within ninety days of termination of
22 employment with the last affiliated public employer;

23 (c) the member files with the
24 association a written application for continued membership
25 within ninety days of termination of employment with the last

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1 affiliated public employer; ~~and~~

2 (d) the member remits to the
3 association, at the times and in the manner prescribed by the
4 association, the member contributions and the employer
5 contributions that would have been made had the member
6 continued in the employ of the last affiliated public employer;
7 and

8 (e) the member makes a contribution to
9 the retiree health care fund pursuant to Subsection C of
10 Section 10-7C-15 NMSA 1978;

11 (2) the contributions required by Paragraph
12 (1) of this subsection shall be based on a salary equal to the
13 member's monthly salary at time of termination of employment
14 with the last affiliated public employer;

15 (3) credited service will be determined as if
16 the employment by the government of the United States was
17 rendered the last affiliated public employer; and

18 (4) the employer contributions remitted by the
19 member shall be credited to the ~~[employer]~~ employer's
20 accumulation fund and shall not be paid out of the association
21 in the event of subsequent cessation of membership."

22 Section 5. Section 10-11-7 NMSA 1978 (being Laws 1987,
23 Chapter 253, Section 7, as amended) is amended to read:

24 "10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE.--

25 A. A member who entered a uniformed service of the

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1 United States may purchase service credit for periods of active
2 duty in the uniformed services subject to the following
3 conditions:

4 (1) the member pays the association the
5 purchase cost determined according to Subsection E of this
6 section;

7 (2) the member has five or more years of
8 service credit acquired as a result of personal service
9 rendered in the employ of an affiliated public employer;

10 (3) the aggregate amount of service credit
11 purchased pursuant to this subsection does not exceed five
12 years reduced by any period of service credit acquired for
13 military service pursuant to any other provision of the Public
14 Employees Retirement Act;

15 (4) service credit may not be purchased for
16 periods of service in the uniformed services that are used to
17 obtain or increase a benefit from another retirement program;
18 [~~and~~]

19 (5) the member must not have received a
20 discharge or separation from uniformed service under other than
21 honorable conditions; and

22 (6) the member makes a contribution to the
23 retiree health care fund pursuant to Subsection C of Section
24 10-7C-15 NMSA 1978.

25 B. A member who was a civilian prisoner of war

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1 captured while in service to the United States as an employee
2 of the federal government or as an employee of a contractor
3 with the federal government may purchase service credit for the
4 period of internment as a civilian prisoner of war, provided
5 that:

6 (1) the member provides proof of employment
7 with the federal government or as a contractor to the federal
8 government in a form acceptable to the association;

9 (2) the member provides proof of the period of
10 internment in a form acceptable to the association;

11 (3) the member has at least five years of
12 service credit acquired as a result of personal service
13 rendered in the employ of an affiliated public employer;

14 (4) the aggregate amount of service credit
15 purchased pursuant to this subsection does not exceed five
16 years reduced by any period of service credit acquired for
17 military service pursuant to any other provision of the Public
18 Employees Retirement Act;

19 (5) service credit may not be purchased for
20 periods of service in internment as a civilian prisoner of war
21 if such periods are used to obtain or increase a benefit from
22 another retirement program; ~~and~~

23 (6) the member pays the association the
24 purchase cost determined according to Subsection E of this
25 section; and

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1 (7) the member makes a contribution to the
2 retiree health care fund pursuant to Subsection C of Section
3 10-7C-15 NMSA 1978.

4 C. A member who was employed by a utility company,
5 library, museum, transit company or nonprofit organization
6 administering federally funded public service programs, which
7 utility company, library, museum, transit company or nonprofit
8 organization administering federally funded public service
9 programs or federally funded public service programs
10 administered by a nonprofit organization are subsequently taken
11 over by an affiliated public employer, or a member who was
12 employed by an entity created pursuant to a joint powers
13 agreement between two or more affiliated public employers for
14 the purpose of administering or providing drug or alcohol
15 addiction treatment services irrespective of whether the entity
16 is subsequently taken over by an affiliated public employer,
17 may purchase credited service for the period of employment
18 subject to the following conditions:

19 (1) the member pays the association the
20 purchase cost determined according to Subsection E of this
21 section;

22 (2) the member makes a contribution to the
23 retiree health care fund pursuant to Subsection C of Section
24 10-7C-15 NMSA 1978;

25 [~~2~~] (3) the member has five or more years of

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1 credited service acquired as a result of personal service
2 rendered in the employ of an affiliated public employer; and
3 ~~(3)~~ (4) the aggregate amount of credited
4 service purchased pursuant to this subsection does not exceed
5 five years.

6 D. A member who was appointed to participate in a
7 cooperative work study training program established jointly by
8 the ~~[state highway and]~~ department of transportation
9 ~~[department]~~ and the university of New Mexico or New Mexico
10 state university may purchase credited service for the period
11 of participation subject to the following conditions:

12 (1) the member pays the association the
13 purchase cost determined according to Subsection E of this
14 section;

15 (2) the member makes a contribution to the
16 retiree health care fund pursuant to Subsection C of Section
17 10-7C-15 NMSA 1978;

18 ~~(2)~~ (3) the member has five or more years of
19 credited service acquired as a result of personal service
20 rendered in the employ of an affiliated public employer; and

21 ~~(3)~~ (4) the aggregate amount of credited
22 service purchased pursuant to this subsection does not exceed
23 five years.

24 E. Except for service to be used under a state
25 legislator coverage plan, the purchase cost for each month of
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1 credited service purchased pursuant to the provisions of this
2 section is equal to the member's final average salary
3 multiplied by the sum of the member contribution rate and
4 employer contribution rate, determined in accordance with the
5 coverage plan applicable to the member at the time of the
6 written election to purchase. The purchase cost for each year
7 of credited service to be used under a state legislator
8 coverage plan is equal to three times the normal member
9 contribution per year of credited service under the state
10 legislator coverage plan applicable to the member. Full
11 payment shall be made in a single lump sum within sixty days of
12 the date the member is informed of the amount of the payment.
13 The portion of the purchase cost derived from the employer
14 contribution rate shall be credited to the employer's
15 accumulation fund and shall not be paid out of the association
16 in the event of cessation of membership. In no case shall a
17 member be credited with a month of service for less than the
18 purchase cost as defined in this section.

19 F. A member shall be refunded, upon written request
20 filed with the association, the portion of the purchase cost of
21 credited service purchased pursuant to this section that the
22 association determines to have been unnecessary to provide the
23 member with the maximum pension applicable to the member. The
24 association shall not pay interest on the portion of the
25 purchase cost refunded to the member.

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1 G. A member of the magistrate retirement system
2 who during [~~his~~] the member's service as a magistrate was
3 eligible to become a member of the public employees
4 retirement system and elected not to become a member of that
5 system may purchase service credit pursuant to the public
6 employees retirement system for the period for which the
7 magistrate elected not to become a public employees
8 retirement system member, by paying the amount of the
9 increase in the actuarial present value of the magistrate
10 pension as a consequence of the purchase as determined by the
11 association and by making a contribution to the retiree
12 health care fund pursuant to Subsection C of Section 10-7C-15
13 NMSA 1978. Full payment shall be made in a single lump-sum
14 amount in accordance with procedures established by the
15 retirement board. Except as provided in Subsection F of this
16 section, seventy-five percent of the purchase cost shall be
17 considered to be employer contributions and shall not be
18 refunded to the member in the event of cessation of
19 membership.

20 H. At any time prior to retirement, any member
21 may purchase service credit in monthly increments, subject to
22 the following conditions:

23 (1) the member has at least five years of
24 service credit acquired as a result of personal service
25 rendered in the employ of an affiliated public employer;

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1 (2) the aggregate amount of service credit
2 purchased pursuant to this subsection does not exceed one
3 year;

4 (3) the member pays full actuarial present
5 value of the amount of the increase in the employee's pension
6 as a consequence of the purchase as determined by the
7 association;

8 (4) the member pays the full cost of the
9 purchase within sixty days of the date the member is informed
10 of the amount of the payment; [~~and~~]

11 (5) the member makes a contribution to the
12 retiree health care fund pursuant to Subsection C of Section
13 10-7C-15 NMSA 1978; and

14 [~~(5)~~] (6) the purchase of service under this
15 subsection cannot be used to determine the final average
16 salary or the pension factor or be used to exceed the pension
17 maximum."

18 Section 6. Section 22-11-34 NMSA 1978 (being Laws 1967,
19 Chapter 16, Section 157, as amended) is amended to read:

20 "22-11-34. ALLOWED SERVICE CREDIT.--

21 A. A member shall be certified to have acquired
22 allowed service credit pursuant to the Internal Revenue Code
23 of 1986 for those periods of time when [~~he~~] the member was:

24 (1) employed prior to July 1, 1967 in a
25 federal educational program within New Mexico, including

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1 United States Indian schools and civilian conservation corps
2 camps. This service credit shall be allowed without
3 contribution;

4 (2) engaged in military service that
5 interrupted [~~his~~] the member's employment in New Mexico if
6 [~~he~~] the member returned to [~~his~~] employment within eighteen
7 months following honorable discharge. This service credit
8 shall be allowed without contribution;

9 (3) engaged in United States military
10 service or the commissioned corps of the public health
11 service from which [~~he~~] the member was honorably discharged
12 if [~~he~~] the member contributes to the fund a sum equal to ten
13 and one-half percent of [~~his~~] the member's average annual
14 salary for that period of time for which [~~he~~] the member has
15 acquired earned service credit pursuant to the Educational
16 Retirement Act and subject to the federal Uniformed Services
17 Employment and Reemployment Rights Act of 1994 for each year
18 of service credit [~~he~~] the member desires to purchase.

19 Average annual salary shall be determined in accordance with
20 rules promulgated by the board but shall always be based on
21 actual salaries earned by the member where the actual
22 salaries can be ascertained by the board. The employer's
23 contributions for service credit shall not be paid by the
24 employer. The purchase of service credit provided in this
25 section shall be carried out by the member within three years

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1 after the date of the member's employment following service;

2 or

3 (4) employed:

4 (a) in a public school or public
5 institution of higher learning in another state, territory or
6 possession of the United States;

7 (b) in a United States military
8 dependents' school operated by a branch of the armed forces
9 of the United States;

10 (c) as provided in Paragraph (1) of
11 this subsection after July 1, 1967; or

12 (d) in a private school or institution
13 of higher learning in New Mexico whose education program is
14 accredited or approved by the [~~state board~~] department at the
15 time of employment.

16 B. Effective July 1, 2001, the member or employer
17 under Paragraph (4) of Subsection A of this section shall
18 contribute to the fund for each year of allowed service
19 credit desired an amount equal to the actuarial value of the
20 service purchased as defined by the board. Payment pursuant
21 to Paragraph (4) of Subsection A of this section may be made
22 in installments, at the discretion of the board, over a
23 period not to exceed one year and, if the sum paid does not
24 equal the amount required for any full year of allowed
25 service credit, the member shall acquire allowed service

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1 credit for that period of time that is proportionate to the
2 payment made. Half credit may be allowed without
3 contribution for not more than ten years of the educational
4 service described by Subparagraph (a) of Paragraph (4) of
5 Subsection A of this section if that service was prior to
6 June 13, 1953 and if the member was employed in New Mexico
7 prior to June 13, 1953 in a position covered by the
8 Educational Retirement Act or a law repealed by that act. No
9 allowed service credit shall be purchased pursuant to
10 Paragraph (4) of Subsection A of this section unless the
11 member is currently employed by a local administrative unit.

12 C. No member shall be certified to have acquired
13 allowed service credit:

14 (1) under any single paragraph or the
15 combination of only Paragraphs (1) and (4) or only Paragraphs
16 (2) and (3) of Subsection A of this section in excess of five
17 years; [~~or~~]

18 (2) in excess of ten years for any other
19 combination of Paragraphs (1) through (4) of Subsection A of
20 this section; or

21 (3) unless the member makes a contribution
22 to the retiree health care fund pursuant to Subsection C of
23 Section 10-7C-15 NMSA 1978.

24 D. The provisions of this section are made
25 applicable to the services described prior to as well as

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1 after the effective date of the Educational Retirement Act."

2 Section 7. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2009.

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